

Anand Prakash Malik

Vs

Bhagwandas

(Dr. A. S. Anand, V. N. Khare JJ)

28.04.1998

ORDER

1. Respondent filed a Civil Suit under the general law for eviction of the appellant from shop No.652/W-3 situate at Panipat and for recovery of Rs.330/- as compensation for use and occupation from January 14, 1976 to March 13, 1976, besides a sum of Rs. 134.06 ps. as house tax and Rs.15.94 ps. as notice expenses.

2. According to the case set up by the landlord in the plaint after the demised premises were vacated by an earlier tenant, Bhagwan Singh, he reconstructed the shop after getting sanction from the Municipal Committee, Panipat. The construction was completed in December, 1968. The appellant-tenant took the premises on rent for a period of 11 months with effect from 14.2.1975 @ Rs.165/- per month plus house tax after executing a rent note dated 14.2.1975.

3. After the expiry of the period of 11 months the tenancy stood determined by efflux of time and the tenant who did not vacate was holding over the property in suit as a tenant-in-sufferance. It was pleaded that a valid notice under Section 106 of the Transfer of Property Act was issued to the tenant but despite that he did not vacate the premises. A specific plea was raised by the landlord to the effect that provisions of the Haryana Act No.11 of 1973 were not attracted and suit under the General law was competent.

4. The tenant resited the suit and in the written statement, apart from raising other objections regarding the maintainability of the suit in the present form and the jurisdiction of the civil court to entertain the suit, it was asserted that the landlord had filed the ejection petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 in respect of the room upstairs and, therefore, the suit under the General law could not proceed. Service of any legal and valid notice was also denied.

5. From the pleadings of the parties the following issues were framed :

"1) Whether the property in suit was constructed a new after 31.3.1962 as alleged and, therefore, this Court has Jurisdiction to try this suit ? OPP

2) Whether the tenancy of the defendant was determined by a valid notice as alleged and if so, to what effect ? OPP

3) Whether the defendant has been holding over the property after the expiry of the agreed period of lease as alleged ? OPP

- 4) Whether the suit is not maintainable in the present form ? OPD
- 5) Whether the plaintiff has filed petition under Section 13 of the Haryana (Control of Rent and Eviction) Act representing the property No.651 as alleged and if so, what effect? OPD
- 6) Whether the shop and a room upstairs constructed one tenancy for a commercial purposes as alleged and if so to what effect ? OPD
- 7) Relief."

The trial court after recording the evidence, held under Issue No.1 that the demised premises had been constructed a new in December, 1968. Issue Nos.2 to 7 were decided in favour of the landlord and the suit was decreed. On appeal, the findings recorded by the trial court under Issues 2 to 7 were not assailed. Finding on Issue No.1, however, was challenged. The first appellate court set aside the finding on Issue No.1 and opined :-

"12) The setting aside of finding on issue No.1 is necessary, because if the finding remains on record it is likely to effect adversely one or the other party. The finding would have been allowed to remain intact if it would have been shown that a decision on this issue was necessary for deciding the suit. I have already shown above that decision of this issue was not necessary and that this matter was premature.

(3) In the light of the above discussion I set aside the finding of the learned lower court on issue No.1 and direct that this matter whether the property in dispute was constructed on the date as alleged in the plaint or whether the property is covered by the Rent Act or not, whether the decree of the Civil Court is executable or not, shall be decided by the Executing Court and when such a dispute is raised before the Executing Court. "

6. The first appellate court, however, confirmed the decree passed by the trial court.
7. A second appeal was filed in the High Court by the appellant. The learned Single Judge of the High Court rightly found that the approach of the first appellate court on Issue no.1 was wholly erroneous. The learned Single Judge however found that despite the application of the provisions of the East Punjab Urban Rent Restriction Act, 1949 (for short the Punjab Act) to the territories forming State of Haryana before the enactment of the Haryana Urban (Control of Rent) and Eviction Act, 1973, by virtue of a Notification dated 22nd October, 1971 published in the Haryana Government Gazette of November 2, 1971, the buildings constructed during the years 1968, 1969 and 1970 were exempted from the provisions of the Punjab Act for a period of five years from the date of "exemption" and as such the civil suit was maintainable.
8. This appeal by special leave calls in question the order of the High Court.
9. We have heard learned counsel for the appellant. No body has appeared for the respondent.
10. The finding of the learned Single Judge noticed above is based on a mis-reading of the Notification.

11. The Notification dated 22nd October, 1971 issued in exercise of the powers under Section 3 of the Punjab Act by the Government of Haryana reads thus :

"Notification No. 5601.S.T.A. 71/30701 - In exercise of power conferred by Section 3 of East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act 3 of 1949) the Governor of Haryana hereby exempts every building constructed during the year 1968, 1969, 1970 from the provisions of said Act for a period of 5 years from the date of its completion."

12. A plain reading of the Notification shows that exemption from the provisions of the Rent Act has been granted to buildings constructed during 1968, 1969 and 1970 for a period of five years from the date of its "completion". It is not disputed and as a matter of fact it has been held by all the three courts below that the premises in dispute were constructed a new in December, 1968. Therefore, the period of exemption of five years from the provisions of the Rent Act pursuant to the Notification dated 22nd October, 1971 has to be reckoned from the date of completion of the construction, and not from the date of the Notification. The building was constructed in December, 1968. The period of exemption, as such, expired in December, 1973. Thus exemption from the provisions of the Rent Act was not available on 30th March, 1976, when the civil suit for eviction was filed. Since, the provisions of the Rent Act were applicable to the building in question on the date when the suit for eviction was filed, the eviction of the tenant could only be sought under the provisions of the Rent Act and on the grounds as contained therein. Recourse to a civil suit under the General laws for seeking eviction of the tenant was not permissible. The learned Single Judge fell in complete error in ignoring this vital aspect of the case.

13. Consequently, we allow this appeal and set aside the judgment and decree of the courts below and hold that the suit filed by the landlord under the General laws for eviction of the tenant was not competent and the remedy for eviction of the appellant lay under the Rent Restriction Act. Since, the respondent is not present, we make no order as to costs.